

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Karl Robert Pfleger et al.	Art Unit :	2165
Patent No. :	7,925,657	Examiner :	Christyann R. Pulliam
Issue Date :	April 12, 2011	Conf. No. :	4198
Serial No. :	10/802,958		
Filed :	March 17, 2004		
Title :	METHODS AND SYSTEMS FOR ADJUSTING A SCORING MEASURE BASED ON QUERY BREADTH		

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO DECISION ON PATENT TERM AND  
NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION

In a Decision on Patent Term and Notice of Intent to Issue Certificate of Correction (“Decision”) dated September 21, 2011, the United States Patent and Trademark Office (“Office”) granted to the extent indicated herein Patentees’ Application For Patent Term Adjustment (PTA) Under 37 C.F.R. § 1.705(d) filed June 9, 2011, for the above patent. The Office agreed to adjust a period of time corresponding to Applicant Delay, for a total Applicant Delay of 104 days. The Office also agreed to partially adjust “B Delay” by an additional 258 days. The Office did not agree that B Delay should not be reduced by 131 days for the period under which the application was not under continued examination.

The USPTO Incorrectly Excluded from B Delay a Period that Does Not Correspond to Time Consumed by Continued Examination

The Decision stated that the patent is entitled to 1,755 days of PTA. Patentees maintain that the patent is entitled to 1,886 days of PTA, for the reasons provided below.

“A Delays” are defined as delays by the USPTO under 35 U.S.C. § 154(b)(1)(A), which guarantees prompt USPTO response. It is Patentees’ understanding that there is no dispute that there was one period of A Delay (May 18, 2005, to January 18, 2007) for a total of 611 days, and one period of C Delay (October 3, 2007, to July 29, 2010) for a total of 990 days.

“B Delays” are defined as delays by the USPTO under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than three year application pendency. Patentees submit that B Delay accumulated for a total of 1,487 days, beginning on March 18, 2007 (the day after the date that is

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three years after the date on which the application was filed), and ending April 12, 2011 (the date the patent was issued). The Office has excluded from B Delay the number of days corresponding to the period beginning on August 17, 2010 (the date on which a Request for Continued Examination was first filed) and ending on April 12, 2011 (the date the patent was issued). However, this entire period should not be excluded from B Delay because it does not correspond exactly to continued examination. The Examiner's mailing of a Notice of Allowance Action on December 3, 2010, closed examination of the application on that date. Section 154(b)(1)(B)(i) of Title 35 excludes from B Delay "time consumed by continued examination of the application." The statute does not provide for exclusion from B Delay of time from the mailing of a Notice of Allowance until issuance (a period during which continued examination did not occur).

The legal issue presented in the preceding paragraph is currently the subject of a civil action against the USPTO in Abbott Biotherapeutics Corp. v. Kappos, 1:2010cv01853 (D.D.C. filed October 29, 2010). The plaintiff in Abbott Biotherapeutics Corp. v. Kappos has argued that the USPTO improperly calculated the length of the statutory delay period defined by 35 USC 154(b)(1)(B) by subtracting from the delay period the number of days from the mailing of a Notice of Allowance until issuance (a period during which continued examination did not occur). In the event that the USPTO is unwilling to increase PTA for the present patent in the manner requested herein, Patentees request that a final decision on this petition be held in abeyance pending the final resolution of the litigation in Abbott Biotherapeutics Corp. v. Kappos. A decision in Abbott Biotherapeutics Corp. v. Kappos will likely settle the legal issue that is central to the present petition.

The fee in the amount of \$200 is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other credits or charges to Deposit Account No. 06-1050, referencing Attorney Docket No. 16113-0326001.

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Respectfully submitted,

Date: November 18, 2011

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